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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4547-2024(O&M)

Date of decision:-06.03.2025

Baldev Kaur

...Petitioners

Versus

Brij Pal Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. P.S. Khurana, Advocate,
Mr. Ajay Kamboj, Advocate and
Mr. Gurpreet, Advocate
for the petitioner.

SUVIR SEHGAL, J.(ORAL)

1. Assailing order dated 22.05.2024, Annexure P1, whereby an application filed by her under Section 10 CPC for staying the proceedings has been dismissed, petitioner/defendant No.2 has approached this Court by way of instant revision petition.

2. Mr. P.S. Khurana, Advocate submits that the petitioner had filed a suit, Annexure P3, for recovery of Rs.60,000/- under the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as "the first suit"), wherein sale deeds dated 02.03.2016 and 14.03.2016 were challenged as being null and void. He states that in the meanwhile, respondent No.1/plaintiff filed a suit, Annexure P2, for possession of a residential house on the basis of sale deed dated 02.03.2016 (hereinafter



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described as “the second suit”) and on an application filed by the petitioner, the second suit was stayed by the Trial Court vide order dated 13.03.2018, Annexure P4. He asserts that the first suit was partly decreed with costs vide judgment dated 31.03.2022, Annexure P5. Petitioner was held entitled to the recovery of maintenance and defendants were restrained from forcibly dispossessing her from the suit land, but both the sale deeds were upheld by the Trial Court. He submits that the judgment has been challenged by the petitioner by filing an appeal (RFA-1846-2023), which is pending and instead of awaiting of its outcome, by the impugned order, Trial Court has rejected the application moved by the petitioner for the stay of the second suit.

3. Issue notice of motion restricted to respondent No.1 only.

4. Mr. Ivan Singh Khosa, Advocate has put in appearance on behalf of respondent No.1/plaintiff and has filed a memo of appearance on her behalf, which is taken on record. He has relied upon a Division Bench judgment of Delhi High Court in **Amita Vashisht Versus Tarun Vedi, 2022 SCC Online Delhi, 2954** to contend that just because one of the two disputed sale deeds is in question in both the suits, it is not a ground for stay of subsequent suit.

5. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.

6. Interpreting Section 10 CPC, Hon’ble Supreme Court in **National Institute of Mental Health and Neuro Sciences Versus C. Parameshwara (2005) 2 SCC 256** has held that the fundamental test to

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attract Section 10 CPC is whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Supreme Court has observed that Section 10 CPC applies only in cases where the whole of the subject matter in both the suits is identical and the key words in Section 10 are “the same matter is already directly and substantially in issue in a previously instituted suit.” Section 10, *ibid*, would apply only if there is identity of the matter in issue in both the suits meaning thereby that the whole of the subject matter in both the proceedings is identical.

7. An examination of the plaint of the first suit, Annexure P3, shows that petitioner had filed a suit for recovery of Rs.60,000/-, as maintenance and for creating a charge on the immovable properties of the defendants. Suit filed by the petitioner was partly decreed vide judgment, Annexure P5, and she was held entitled to maintenance as also for permanent injunction, whereas other reliefs were declined. This suit is a subject matter of the first appeal, which is pending before this Court and has been adjourned on the request of her counsel. The second suit, Annexure P2, instituted by respondent No.1/plaintiff is for possession of a residential house and for mandatory injunction directing the defendants, including the present petitioner, to pay mesne profits @ Rs.5,000/- per month. No doubt, sale deed dated 02.03.2016 is under challenge in the second suit, but the entire subject matter in issue is not directly and substantially in issue in the second suit. There is no wholesome similar identity of both the suits. Both the suits proceed on different cause of action, although there is some overlapping. The

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subject matters of the two suits do not meet the rigor of the test under Section 10 CPC. A somewhat similar situation arose before the Delhi High Court in *Amita Vashisht's* case (supra). Holding that besides the similarity in relief, the other two conditions, which are required to be satisfied under Section 10 CPC is the identity of the cause of action and the identity of the subject matter. High Court of Delhi held that in the absence of satisfaction of either of the conditions, a suit cannot be stayed under Section 10 CPC. In view of the clear settled legal position, this Court is of the view that there is no illegality or perversity in the order passed by the Trial Court.

8. Finding the petition to be meritless, it is dismissed with no order as to costs.

9. Pending miscellaneous application, if any, shall stand disposed off.

(SUVIR SEHGAL)
JUDGE

06.03.2025
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No